

The question of whether transactions are retail sales subject to the Retailers' Occupation and Use Taxes or are sales of service subject to liability under the Service Occupation and Service Use Tax Acts depends in part upon characteristics of the items being produced and the extent to which the vendor has engaged in the design of such items. See 86 Ill. Adm. Code 130.2115. (This is a GIL.)

July 14, 2003

Dear Xxxxx:

This letter is in response to your letter received by our office on February 21, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am writing regarding AAA sales tax rate, which currently is 6.5%. My question is, does AAA qualify for the 'service man' rate of 3.25%?

AAA designs trade show exhibits for our clients. A separate company, with different owners, BBB, actually builds the exhibits and bills AAA. If we are using the booths for rental, BBB will charge AAA 6.5% sales tax. If we are reselling the booths, they do not charge us sales tax, as we charge our client the 6.5% sales tax.

As the cost of the exhibit is usually less than 40% of our invoice to our clients, doesn't that qualify for the "service man" rate? And, if in fact we do qualify for the reduced sales tax rate, are we then liable to pay the 6.5% sales tax on all BBB invoices?

Please enlighten me on this subject. You may call me or write me. I look forward to your response.

#### **DEPARTMENT'S RESPONSE:**

We cannot tell from the limited description in your letter if your company's activities qualify as a service situation or not under Illinois sales tax laws. Please see the following information that may assist you in determining your proper tax liability.

The question of whether transactions are retail sales subject to the Retailers' Occupation and Use Taxes or are sales of service subject to liability under the Service Occupation and Service Use

Tax Acts depends in part upon characteristics of the items being produced and the extent to which the vendor has engaged in the design of such items. Department rules regarding sellers of machinery, tools and the like and sellers of curtains, slip covers, floor covering and other similar items made to order provide some guidance. See the enclosed copies of 86 Ill. Adm. Code 130.2115 and 130.2140.

Subsection (b) of 86 Ill. Adm. Code 130.2115 states in part:

“b) When Not Liable For Retailers' Occupation Tax

- 1) The seller of a special machine, tool, die, jig, pattern, gauge or other similar item is engaged primarily in a service occupation, rather than in the business of selling tangible personal property, and so does not incur Retailers' Occupation Tax liability with respect to the sale, if the following tests for exemption are all met in the transaction:
  - A) The purchaser employs the seller primarily for his engineering or other scientific skill to design and produce the property on special order for the purchaser and to meet the particular needs of the purchaser;
  - B) the property has use or value only for the specific purpose for which it is produced; and
  - C) the property has use or value only to the purchaser.
- 2) On the requirement of design by the seller, it is sufficient if the seller is responsible for making a substantial contribution to the designing of the property that is to be produced on special order and sold.
- 3) If the item qualifies for Retailers' Occupation Tax exemption under this Section, such exemption is not lost merely because the seller subcontracts the service work to someone else as long as the seller is contractually responsible to see that the necessary service work is provided.
- 4) On the question of "use or value only to the purchaser", this test for exemption is met if the property is not standard enough to be stocked or to be ordered from a catalog or other type of sales literature, but has to be produced in accordance with special requirements which are peculiar to the purchaser and not common to someone else whose conditions for possible use of the property can be shown by the Department to be reasonably comparable to those of the purchaser.”

Subsection (a) of 86 Ill Adm. Code 130.2140 provides examples of how vendors of made to order items are making retail sales subject to Retailers' Occupation Tax liability.

“a) When Liable For Tax

- 1) Persons who engage in the business of selling portieres, drapes, curtains, marquee curtains, slip covers, floor covering, tents, tarpaulins and other similar items incur Retailers' Occupation Tax liability when selling such items (with or without installation by the seller) to purchasers for use or consumption and not for

resale whether such items are sold as stock or standard items or whether the seller produces such items on special order for the purchaser.

- 2) The same is true when custom-made Venetian blinds, window shades, awnings, screen doors, window screens, storm doors and storm windows are sold at retail "over-the-counter" without installation by the seller as a construction contractor under Section 130.1940(c) of this Part. This is true because such items, when produced on special order, serve substantially the same function as stock or standard items of tangible personal property which is sold at retail.
- 3) When sellers permanently affix tangible personal property, such as floor coverings, to real estate, they act as construction contractors and incur Use Tax rather than Retailers' Occupation Tax. (For further information regarding the sales tax liabilities of construction contractors, see the Department's regulations on Construction Contractors and Real Estate Developers at 86 Ill. Adm. Code 130.1940 and Sales to Construction Contractors, Real Estate Developers and Speculative Builders at 86 Ill. Adm. Code 130.2075.)"

From the limited information contained in your letter, we cannot determine whether the sales of the trade show exhibits are subject to Retailers' Occupation Tax liability in the same manner as stock or standard items (such as stock or standard display tables or shelving etc.). If the transactions you have referenced are not considered retail sales, but are considered sales of service and if tangible personal property is transferred incident to those sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information we are enclosing copies of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See the enclosed copy of 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See the enclosed copy of 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of

service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See the enclosed copy of 86 Ill. Adm. Code 140.108.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

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Associate Counsel

TDC:msk  
Enc.